IN THE UNITED STATES DISTRICT COURT FOR



ROBERT D. DENNIS, CLERK

THE WESTERN DISTRICT OF OKLAHOMA

GARY LEE WADDEL,)	U.S. DIST. COURT, WESTERN DIST. OF OKLA BY
Petitioner,)	
VS.)	No. CIV-08-873-W
JUSTIN JONES,)	
Respondent.	ý	

<u>ORDER</u>

On October 23, 2008, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss Petition filed by respondent Justin Jones be denied. Magistrate Judge Purcell made further recommendations regarding the "mixed" Petition for Writ of Habeas Corpus ("Petition")¹ filed by petitioner Gary Lee Waddel.

The parties were advised of their right to object to the Report and Recommendation, but no objections have been received by the Court within the designated time. Waddel was also granted the opportunity to inform the Court that he wished to delete the unexhausted claims in his Petition rather than returning to state court to exhaust the unexhausted claims in his Petition. He has not done so.

Upon review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter, and accordingly, the Court

¹"Mixed" habeas petitions contain both exhausted and unexhausted claims. Pursuant to title 28, section 2254(b) of the United States Code, such petitions should generally be dismissed "leaving the prisoner with the choice of returning to state court to exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted claims to the district court." Rose v. Lundy, 455 U.S. 509, 510 (1982).

(1) ADOPTS the Report and Recommendation issued on October 23, 2008;

(2) DENIES the Motion to Dismiss Petition [Doc. 10] filed on September 26, 2008,

by respondent Jones; and

(3) ORDERS as follows:

(a) this matter is hereby STAYED until thirty (30) days after Waddel has

exhausted his state court remedies by pursuing post-conviction relief regarding the matters

in his unexhausted claims in the District Court for Comanche County, Oklahoma, and if

necessary, the Oklahoma Court of Criminal Appeals;

(b) Waddel is ADVISED that this stay is conditioned upon proof that he has

filed an application for post-conviction relief in the District Court for Comanche County,

Oklahoma, within thirty (30) days of the date of this Order;

(c) Waddel is further ADVISED that he shall file in this matter a copy of his

application for post-conviction relief that bears a file stamp that shows the date the

application was filed in the District Court for Comanche County, Oklahoma; and

(d) Waddel is ADVISED that his failure to comply with this Court's Order may

result in dismissal of the instant matter.

The Clerk of the Court is DIRECTED to administratively terminate this matter in his

records in accordance with this Order while this matter is stayed and until further Order of

the Court.

ENTERED this <u>17th</u> day of November, 2008.

LEF/R. WEST

UNITED STATES DISTRICT JUDGE